

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 18, 2008

STATE OF TENNESSEE v. MICHAEL R. VANCE

**Direct Appeal from the Criminal Court for Unicoi County
No. 5413 Lynn W. Brown, Judge**

No. E2008-00943-CCA-R3-CD - Filed August 14, 2009

Defendant, Michael R. Vance, appeals the trial court's order revoking his community corrections sentence and ordering him to serve the balance of his sentence in the Department of Correction. After a thorough review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Robert Y. Oaks, District Public Defender; David Hall Crichton, Assistant Public Defender, Johnson City, Tennessee, for the Appellant, Michael R. Vance.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; Anthony Wade Clark, District Attorney General; Fred Lance, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Background

We observe initially that Defendant's judgments of conviction for the offenses giving rise to his community corrections sentence is not in the record, nor is his subsequent judgment of conviction for vandalism which supported the revocation of his community corrections sentence. Our review of the circumstances of these offenses, therefore, is limited to that information contained in the violation of probation warrant and the transcript of the revocation hearing. Normally, when presented with an inadequate record on appeal, this Court must presume that the trial court ruled correctly. See State v. Ivy, 868 S.W.2d 724, 728 (Tenn. Crim. App. 1993). The appealing party bears the burden of preparing a complete and adequate record for the issues presented on appeal. See Tenn. R. App. P. 24(b). Nonetheless, we will review the record that is available in this appeal.

We glean from the violation report attached to the violation of probation warrant that Defendant was convicted in Unicoi County on May 2, 2005, for one count of burglary and one count of theft of property valued over \$1,000. According to the violation report, the trial court sentenced Defendant on July 20, 2007, as a multiple offender, to an effective sentence of six years. It appears that the trial court suspended Defendant's sentence and placed him on probation in a community corrections program for a term of six years from July 20, 2007, until July 20, 2013. On January 18, 2008, a violation of probation warrant was issued alleging that Defendant had violated the terms of his community corrections sentence by incurring a new charge of vandalism on January 10, 2008, and by failing to adhere to the terms of his house arrest.

At the revocation hearing Defendant admitted that he entered a plea of guilty to vandalism. Defendant stated that the offense occurred at the home of his estranged wife, and that he broke down the front door of the residence in order to retrieve his personal belongings. Defendant admitted that an order of protection was issued on January 23, 2008, and that a violation of the order of protection was issued on January 24, 2008.

At the revocation hearing, the State elected to rely on Defendant's admission of the vandalism conviction and chose not to call any witnesses to testify. There was, however, a lengthy colloquy during the hearing among the parties, the trial court, and Defendant's estranged wife, Shanna Vance, who was present in the courtroom. However, neither the State nor Defendant called Ms. Vance to testify as a witness at the hearing. At the conclusion of the revocation hearing, the trial court revoked Defendant's community corrections sentence for failure to obey the laws of the land and failure to adhere to the terms of his house arrest, and it ordered Defendant to serve the balance of his sentence in confinement.

II. Analysis

Defendant argues that the trial court violated his due process rights because it failed to provide Defendant with the evidence that would be used against him, failed to allow Defendant to confront and cross-examine adverse witnesses, and failed to provide a written statement as to the evidence relied on and the reasons for revoking probation.

A trial court may revoke a defendant's community corrections sentence based on the defendant's conduct and the defendant's noncompliance with the conditions of the community-based program. T.C.A. § 40-36-106(e)(3)-(4). Such a decision is within the trial court's discretion, and this court will not disturb a trial court's revocation judgment unless there is "no substantial evidence" that a "violation of the conditions of [the community corrections program] has occurred. State v. Harkins, 811 S.W.2d 79, 82-83 (Tenn. 1991) (citing State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978) and State v. Delp, 614, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980) (adopting the probation violations standard for a community corrections program violation due to the sentences' similar nature)). In other words, the trial court must find proof of a community corrections violation by a preponderance of the evidence. T.C.A. § 40-35-311(e); State v. Joe Allen Brown, No. W2007-00693-CCA-R3-CD, 2007 WL 4462990, at *4 (Tenn. Crim. App., at Jackson, Dec. 20, 2007), no

perm. to appeal filed. We note that “only one basis for revocation is necessary,” and a defendant’s admission that he violated the conditions of his release to the community corrections programs is sufficient evidence for such a revocation. Brown, 2007 WL 4462990, at *4 (quoting State v. Alonzo Chatman, No. E2000-03123-CCA-R3-CD, 2001 WL 1173895, at *2 (Tenn. Crim. App., at Knoxville, Oct. 5, 2001), no perm. to appeal filed (citing State v. Johnson, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999)).

While a defendant who has been granted probation has only a conditional liberty interest, that conditional interest “must be protected by due process.” State v. Merriweather, 34 S.W.3d 881, 884 (Tenn. Crim. App. 2000) (citations omitted); see Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S. Ct. 1756, 1759-60 (1973); Morrissey v. Brewer, 408 U.S. 471, 481-89, 92 S. Ct. 2593-2600-04 (1972). Accordingly, a defendant facing the revocation of probation is entitled to the “minimum requirements of due process,” which the Supreme Court in Scarpelli and Morrissey identified as including: (1) written notice of the claimed violation(s) of probation; (2) disclosure to the probationer of evidence against him; (3) the opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless good cause is shown for not allowing confrontation); (5) a neutral and detached hearing body, members of which need not be judicial officers or lawyers; and (6) a written statement by the factfinder regarding the evidence relied upon and the reasons for revoking probation. Scarpelli, 411 U.S. at 786; Morrissey, 408 U.S. at 489.

Defendant argues that he was not given prior notice of a letter the trial court had received from Ms. Vance. The trial court read portions of the letter in open court which stated that Defendant was “addicted to crack cocaine; married October 2005; continued to use crack; lost a good job for using cocaine; caught stealing money from business on numerous occasions; eventually fired.” The trial court then stated, “I’ll let you have it back, Sheriff. If something is marked confidential I don’t even open it, because that’s illegal.”

The trial court also addressed an affidavit that was in the file which stated that Defendant had threatened to burn down Ms. Vance’s parent’s home, and that Defendant had broken down the door to Ms. Vance’s home. Defendant objected to the introduction of the affidavit as hearsay. The trial court asked the State if it planned to call any witnesses, and the State responded that it intended to rely on Defendant’s admission of his conviction of vandalism as proof of violation of his community corrections probation. Defendant concedes in his brief that the letter from Ms. Vance and the affidavit were never introduced into evidence. We acknowledge that there was a significant amount of colloquy among the parties, the trial court, and Ms. Vance. However, after review, it is clear from the record that the trial court did not rely on these discussions or the affidavit and letter in making its determination.

Defendant also contends that his due process rights were violated because he was denied the right to cross-examine Ms. Vance concerning her letter and statements made in court concerning the circumstances surrounding Defendant’s vandalism conviction. Defendant also argues that he was denied the right to cross-examine the author of the affidavit. As noted above, however, the trial

court did not rely on these documents, they were not introduced into evidence, and the State chose not to call any witnesses. Defendant also did not choose to call Ms. Vance as a witness. Because no witnesses were called to testify at the revocation hearing, we find no violation of Defendant's right to cross-examine adverse witnesses.

At the conclusion of the revocation hearing, the trial court stated, "Probation is revoked. The six-year sentence is imposed." Defendant contends that this announcement, without a statement as to the reason why his participation in the community corrections program was revoked, violated his due process rights. Defendant also directs our attention to the court's minutes of the revocation proceeding which stated:

[r]evocation hearing held. Evidence presented. Probation revoked. Def[endant] to serve sentence.

Nonetheless, the trial court issued a written order stating that the reasons for the revocation of Defendant's community corrections sentence were "failure to obey all laws of the land," and "failure to adhere to 24-hour house arrest." Defendant admitted that he committed the offense of vandalism, and that the offense occurred at the residence of Ms. Vance where Defendant was not living at the time he committed the offense. We conclude that the trial court's written order satisfies the due process requirement of a "written statement."

Based on our review, we conclude that the trial court did not abuse its discretion in revoking Defendant's community corrections sentence, and that the revocation proceedings did not violate Defendant's due process rights. Defendant is not entitled to relief on this issue.

CONCLUSION

After a thorough review of the record, we affirm the judgment of the trial court.

THOMAS T. WOODALL, JUDGE